

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

HEATHER COUTURE,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting  
Commissioner of Social Security,

Defendant.

Case No. 2:15-cv-01994-RBL

ORDER AFFIRMING DEFENDANT'S  
DECISION TO DENY BENEFITS

THIS MATTER is before the Court on Plaintiff Couture's Complaint [Dkt. #3] for review of the Social Security Commissioner's denial of her applications for disability insurance and supplemental security income ("SSI") benefits.

Couture suffers from urinary incontinence, atypical lower extremity weakness of unclear etiology, obesity, gastritis, and lumbar degenerative disc disease. *See* Dkt. 6, Administrative Record ("AR") 20. She protectively filed applications for disability insurance and SSI benefits in March 2013, alleging she became disabled beginning in March 2012. *See* AR 18. Those applications were denied upon initial administrative review and on reconsideration. *See id.* A hearing was held before Administrative Law Judge Gordon W. Griggs in July 2014. *See id.* Couture appeared at the hearing, as did a vocational expert. *See id.*

The ALJ determined Couture to be not disabled. *See* AR 18-25. The Appeals Council denied Couture's request for review, making the ALJ's decision the final decision of the

1 Commissioner. *See* AR 1-7; 20 C.F.R. §§ 404.981, 416.1481. In December 2015, Couture filed a  
2 complaint in this Court seeking judicial review of the Commissioner's final decision. *See* Dkt. 3.

3 Couture argues that the Commissioner's decision to deny benefits should be reversed and  
4 remanded, because the ALJ erred: (1) in determining Couture's severe impairments; and (2) in  
5 evaluating the medical evidence in the record. The Commissioner argues that the ALJ committed  
6 no harmful error at those stages, so the ALJ's finding that Couture could perform past relevant  
7 work and is therefore not disabled was supported by substantial evidence and should be affirmed.  
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### 9 I. DISCUSSION

10 The Commissioner's determination that a claimant is not disabled must be upheld by the  
11 Court if the Commissioner applied the "proper legal standards" and if "substantial evidence in  
12 the record as a whole supports" that determination. *Hoffman v. Heckler*, 785 F.2d 1423, 1425  
13 (9th Cir. 1986); *see also Batson v. Comm'r, Soc. Sec. Admin.*, 359 F.3d 1190, 1193 (9th Cir.  
14 2004); *Carr v. Sullivan*, 772 F.Supp. 522, 525 (E.D. Wash. 1991) ("A decision supported by  
15 substantial evidence will, nevertheless, be set aside if the proper legal standards were not applied  
16 in weighing the evidence and making the decision.") (citing *Browner v. Sec'y of Health and*  
17 *Human Services*, 839 F.2d 432, 433 (9th Cir. 1987)).  
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19 Substantial evidence is "such relevant evidence as a reasonable mind might accept as  
20 adequate to support a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (citation  
21 omitted); *see also Batson*, 359 F.3d at 1193 ("[T]he Commissioner's findings are upheld if  
22 supported by inferences reasonably drawn from the record."). "The substantial evidence test  
23 requires that the reviewing court determine" whether the Commissioner's decision is "supported  
24 by more than a scintilla of evidence, although less than a preponderance of the evidence is  
25 required." *Sorenson v. Weinberger*, 514 F.2d 1112, 1119 n.10 (9th Cir. 1975). "If the evidence  
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1 admits of more than one rational interpretation,” the Commissioner’s decision must be upheld.  
 2 *Allen v. Heckler*, 749 F.2d 577, 579 (9th Cir. 1984) (“Where there is conflicting evidence  
 3 sufficient to support either outcome, we must affirm the decision actually made.”) (quoting  
 4 *Rhinehart v. Finch*, 438 F.2d 920, 921 (9th Cir. 1971)).<sup>1</sup>

5 **A. The ALJ’s Evaluation of Couture’s Severe Impairments**

6 At step two, “the medical severity” of a claimant’s impairments is considered. 20 C.F.R.  
 7 § 416.920(a)(4)(ii). If the claimant has no “severe medically determinable” impairment, then she  
 8 will be found not disabled. *Id.* An impairment is “not severe” if it does not “significantly limit  
 9 [the claimant’s] mental or physical abilities to do basic work activities.” 20 C.F.R. § 416.920(a);  
 10 *see also* Social Security Ruling (“SSR”) 96-3p, 1996 WL 374181 at \*1. The claimant has the  
 11 burden of proving that her “impairments or their symptoms affect her ability to perform basic  
 12 work activities.” *Edlund v. Massanari*, 253 F.3d 1152, 1159-60 (9th Cir. 2001); *Tidwell v. Apfel*,  
 13 161 F.3d 599, 601 (9th Cir. 1998).

14 The step-two inquiry, however, is a *de minimis* screening device used to dispose of  
 15 groundless claims. *See Smolen v. Chater*, 80 F.3d 1273, 1290 (9th Cir. 1996). Once step two is  
 16 resolved in a claimant’s favor, harmful error only occurs if the ALJ fails to properly analyze  
 17 evidence of the non-severe impairments that shows work-related limitations beyond those  
 18 assessed in the RFC. *See Hoopai v. Astrue*, 499 F.3d 1071, 1076 (9th Cir. 2007); *Molina v.*  
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 23 <sup>1</sup> As the Ninth Circuit has further explained:

24 . . . It is immaterial that the evidence in a case would permit a different conclusion than that  
 25 which the [Commissioner] reached. If the [Commissioner]’s findings are supported by  
 26 substantial evidence, the courts are required to accept them. It is the function of the  
 [Commissioner], and not the court’s to resolve conflicts in the evidence. While the court may  
 not try the case de novo, neither may it abdicate its traditional function of review. It must  
 scrutinize the record as a whole to determine whether the [Commissioner]’s conclusions are  
 rational. If they are . . . they must be upheld.

*Sorenson*, 514 F.2d at 1119 n.10.

1 *Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012) (error is harmless where it is “inconsequential to the  
2 ultimate nondisability determination”). Plaintiff has the burden of establishing that an error  
3 resulted in actual harm. *See Ludwig v. Astrue*, 681 F.3d 1047, 1054 (9th Cir. 2012).

4         The ALJ found Couture had several severe impairments at step two and continued with  
5 the sequential evaluation process. *See* AR 20. Still, Couture argues that the ALJ erred by failing  
6 to find vestibular disorder to be a severe impairment at step two. *See* Dkt. 8, pp. 2-5. The  
7 Commissioner concedes that the ALJ erred by failing to identify vestibular disorder as a severe  
8 impairment, but argues that the error was harmless because limitations from that impairment  
9 were still considered and included in the residual functional capacity (“RFC”), which limited  
10 Couture to sedentary work with additional postural restrictions. *See* Dkt. 9, pp. 4-6; AR 22.

12         In her briefing, Couture lists several symptoms and limitations allegedly stemming from  
13 her vestibular disorder of which she complained at the hearing and at appointments with  
14 physicians. *See* Dkt. 8, pp. 3-4. However, the ALJ found Couture’s complaints not to be  
15 credible—a finding that goes unchallenged in the opening brief. *See* AR 23; *see also Kim v.*  
16 *Kang*, 154 F.3d 996, 1000 (9th Cir. 1998) (finding that matters on appeal not specifically and  
17 distinctly argued in opening brief ordinarily will not be considered). Couture then asserts that  
18 two physical therapists found that she had significant limitations in balance and gait. *See* Dkt. 8,  
19 pp. 4-5. However, the ALJ accommodated impaired balance and gait in the RFC, which limited  
20 Couture to sedentary work with only occasional balancing. *See* AR 22. The therapists did not  
21 specify any level of limitation that indicates the RFC is deficient. *See* AR 663, 668. Couture also  
22 notes that a physical therapist opined that she was severely disabled by vestibular symptoms. *See*  
23 Dkt. 8, pp. 4-5. However, “the ultimate determination” as to whether a claimant is disabled is an  
24 issue reserved to the Commissioner. 20 C.F.R. § 416.912(b)(7). Couture therefore fails to  
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1 establish any work-related limitations stemming from her vestibular disorder that were  
2 insufficiently analyzed by the ALJ.<sup>2</sup> Couture has not met her burden to show harmful error in the  
3 ALJ's assessment of Couture's impairments at step two and, as required, thereafter.

4 **B. The ALJ's Evaluation of the Medical Evidence in the Record**

5 The ALJ is responsible for determining credibility and resolving ambiguities and  
6 conflicts in the medical evidence. *See Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir. 1998).  
7 Where the medical evidence in the record is not conclusive, "questions of credibility and  
8 resolution of conflicts" are solely the functions of the ALJ. *Sample v. Schweiker*, 694 F.2d 639,  
9 642 (9th Cir. 1982). In such cases, "the ALJ's conclusion must be upheld." *Morgan v. Comm'r,*  
10 *Soc. Sec. Admin.*, 169 F.3d 595, 601 (9th Cir. 1999). Determining whether inconsistencies in the  
11 medical evidence "are material (or are in fact inconsistencies at all) and whether certain factors  
12 are relevant to discount" the opinions of medical experts "falls within this responsibility." *Id.* at  
13 603. In resolving questions of credibility and conflicts in the evidence, an ALJ's findings "must  
14 be supported by specific, cogent reasons." *Reddick*, 157 F.3d at 725. The ALJ can do this "by  
15 setting out a detailed and thorough summary of the facts and conflicting clinical evidence, stating  
16 his interpretation thereof, and making findings." *Id.*

17 Couture argues that the ALJ erred by failing to consider the opinion of her treating  
18 physical therapist, Ashley N. Dennis, PT, DPT, NCS. *See* Dkt. 8, p. 5. However, any failure to  
19 consider Ms. Dennis's opinion was harmless. Ms. Dennis opined that Couture was "severely  
20 disabled by vestibular symptoms." AR 663. As discussed above, an ALJ is not bound by a  
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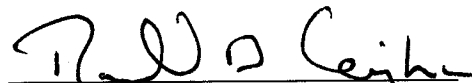
25 <sup>2</sup> In her reply brief, Couture argues that the ALJ's error at step two is harmful because the ALJ failed to evaluate the  
26 opinion of Larry G. Duckert, M.D., Ph.D., C.S.N. *See* Dkt. 10, pp. 4-6. Issues not specifically and distinctly argued  
in the opening brief ordinarily will not be considered by this Court. *See Kim*, 154 F.3d at 1000. Regardless, Couture  
only lists symptoms and diagnoses found by Dr. Duckert, again failing to identify any specific workplace limitations  
to which Dr. Duckert opined that the ALJ failed to include in the RFC. *See* Dkt. 10, pp. 2-6.

1 medical opinion on an ultimate issue of disability; that issue is reserved for the Commissioner.  
2 20 C.F.R. § 416.912(b)(7); *see also Weetman v. Sullivan*, 877 F.2d 20, 22 (9th Cir. 1989). Ms.  
3 Dennis also opined that Couture had significant limitations to her vestibulo-ocular reflex and her  
4 balance and gait. *See* AR 663. However, the ALJ accommodated such general limitations in the  
5 RFC, and Ms. Dennis did not opine as to any specific workplace limitations that could indicate  
6 the RFC is deficient. *See* AR 22. Therefore, Couture has not shown any harmful error in the  
7 ALJ's failure to discuss Ms. Dennis's opinion.  
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## 9 II. CONCLUSION

10 Based on the foregoing discussion, the Court hereby finds the ALJ properly concluded  
11 Couture was not disabled. Accordingly, the Commissioner's decision to deny benefits is  
12 AFFIRMED, and Couture's Complaint [Dkt. #3] is DISMISSED with prejudice.  
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14 DATED this 17<sup>th</sup> day of June, 2016.

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17 Ronald B. Leighton  
18 United States District Judge  
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